

REMARKS

Entry of the foregoing, reexamination and reconsideration of the subject application, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

I. Amendments to the Specification

By the foregoing amendments to the specification, the specification has been amended as in parent application 10/506,543 (allowed). In particular, the specification has been amended by replacing reference to "WO 00/01730" with reference to "U.S. Patent No. 7,253,143 B1" at page 10. The specification has been further amended to express a clear intent to incorporate by reference by using the phrase "hereby incorporated by reference."

U.S. Patent No. 7,253,143 B1 issued from U.S. Patent Application No. 09/743,107. The '107 application was a national stage entry of PCT Application No. PCT/SE99/01230, which published as WO 00/01730. The disclosure of U.S. Patent No. 7,253,143 B1 is thus the same as the disclosure of WO 00/01730. Accordingly, the material incorporated by reference to the U.S. patent is the same as the material previously incorporated by reference to the WO publication. Furthermore, the present application as filed clearly conveyed an intent to incorporate the material by reference. Therefore, the amendment contains no new matter. (*See* 37 C.F.R. § 1.57(g) and MPEP § 608.01(p).)

Finally, the specification has been amended to cancel the paragraph inserted at page 10 of the specification via the Reply filed October 22, 2007.

II. Sequence Listing

Submitted herewith is a Sequence Listing (and statement in support thereof) comprising the sequences listed in U.S. Patent No. 7,253,143, incorporated by reference in the present specification.

III. Amendments to the Claims

By the foregoing amendments to the claims, claim 46 has been amended, withdrawn claims 25-45 and 47-48 have been canceled, and new claims 49-56 have been added.

In particular, claim 46 has been amended to recite that the peptide comprises ²⁰Cys-Phe-X₁-X₂-X₃-X₄-X₅-X₆-X₇-Lys-Val-Arg³¹ (SEQ ID NO: 99), wherein X₁ is Gln or Ala; X₂

is Trp or Leu; X₃ is Gln, Lys, Orn, Ala, or Nle; X₄ is Arg, Lys, or Ala; X₅ is Asn, Orn, Ala, or Nle; X₆ is Met or Leu; and X₇ is Arg or Lys; and that the peptide is selected from the group consisting of SEQ ID NOS: 2-5, 8, 31-37, 47, 49, 51, 63, 65, 67, 70, 72-74, 80-83, and 87-97. New claims 49-56 recite embodiments of the invention recited in claim 46. The amendments to the claims are supported throughout the disclosure of the present application and U.S. Patent No. 7,253,143.

Other amendments to the claims have also been made to clarify the claim language, for consistency, and to bring the claims into better conformance with U.S. patent practice. These amendments are merely editorial in nature and are not intended to change the scope of the claims or any elements recited therein.

The amendments to the claims are supported throughout the application as filed. In addition, the amendments to the claims have been made without prejudice or disclaimer to any subject matter recited or canceled herein, and Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments to the above-identified application are respectfully requested.

IV. Response to Claim Rejections Under 35 U.S.C. § 102

Claim 46 has been rejected under 35 U.S.C. § 102(e) as purportedly being anticipated by Reuben et al., U.S. Publication 2002/0072596. This rejection is respectfully traversed.

It is well established that for prior art to be anticipatory, every element of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *See, e.g., Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 213 U.S.P.Q. 81, 90 (Fed. Cir. 1986). Applicants submit that Reuben et al. fails to satisfy this requirement, for at least the following reasons.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, the claims have been amended as described above. Specifically, claim 46 has been amended to recite particular peptides derived from human lactoferrin. Applicants submit that the cited reference fails to teach or even suggest the peptide derivatives recited in the present claims, much less that the derivatives might be useful for treating a wound and/or improving wound healing.

Because Reuben et al. does not teach or even suggest each and every feature of claim 46, Applicants respectfully request reconsideration and withdrawal of this rejection.

V. Response to Claim Rejections Under 35 U.S.C. § and 103

Claim 46 has been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Mita et al., U.S. Patent No. 5,561,009, in view of Rekdal et al., 1999. This rejection is respectfully traversed.

Mita et al. and Rekdal et al., taken alone or in combination, do not teach or suggest the subject matter of the present claims. In particular, the references do not teach or suggest the lactoferrin peptides set forth in U.S. Patent No. 7,253,143, now recited in the present claims. Thus, it would not have been obvious that such peptides would be suitable for treating a wound and/or improving wound healing.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

VI. Response to Double Patenting Rejection

Claim 46 has been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1 and 23 of copending Application No. 10/092,919.

This rejection is provisional only, because the allegedly conflicting claims have not yet been allowed. Applicants will consider filing one or more Terminal Disclaimers, if appropriate, once allowable subject matter is determined.

VII. Response to the Objections to the Specification

The specification has been objected to for containing sequence disclosure at page 10, lines 11-12. Furthermore, the amendment filed October 22, 2007 has been objected to under 35 U.S.C. § 132(a) because it allegedly introduces new matter into the disclosure.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, the specification has been amended as described above. In particular, the paragraph added at page 10 of the specification has been deleted, thus deleting the sequence disclosure cited by the Examiner. In addition, the specification has also been amended to refer to U.S. Patent No. 7,253,143 rather than the corresponding WO publication.

Accordingly, the objections to the specification are moot.

VIII. Response to Claim Rejections Under 35 U.S.C. §112, First Paragraph

Claim 46 has been rejected under 35 U.S.C. § 112, first paragraph, as purportedly failing to comply with the written description requirement.

Specifically, the Examiner has stated that essential material cannot be incorporated by reference to a WO publication.

As noted above, the specification has been amended to incorporate the essential material by reference to the corresponding U.S. patent, in accordance with 37 C.F.R. § 1.57.

Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

IX. Response to Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 46 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

Specifically, the Examiner has indicated that it is not clear what peptides are meant by the phrase "a peptide derived from amino acid 12 to amino acid 40 of human lactoferrin."

As noted above, the claims have been amended to more explicitly recite the lactoferrin derivatives.

Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

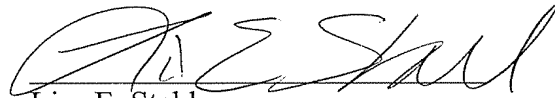
In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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